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Unlawful Laws of Congress

Dicta Editorial Board

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UNLAWFUL LAWS OF CONGRESS

The West Publishing Company recently printed a list of laws held unconstitutional by the Supreme Court. Several requests have been made that DICTA reprint the list.

1803. *Marbury v. Madison*, 1 Cranch. 137.

Declared unconstitutional provisions of Act Sept. 24, 1789, as attempting to give to the Supreme Court original jurisdiction in other cases than those prescribed in the Constitution.

1857. *Dred Scott v. Sandford*, 19 How. 393.

Declared unconstitutional the "Missouri Compromise," Act March 6, 1820, on the ground that an act which prohibited a citizen from owning certain property in territory north of a certain line and granted the right to others was not warranted by the Constitution.

1865. *Gordon v. United States*, 2 Wall. 561.

Declared unconstitutional provisions of Act March 3, 1863, granting appeals from the Court of Claims to the Supreme Court.

1867. *Ex parte Garland*, 4 Wall. 333.

Declared unconstitutional provisions of Act Jan. 24, 1865, prescribing a test oath that the opponent had never voluntarily borne arms against the United States as a qualification for admission to practice before the Supreme Court; the reason being that such act was a bill of attainder.

1868. *Reichert v. Felps*, 6 Wall. 160.

Declared unconstitutional provisions of Act Feb. 20, 1812, authorizing a board of revision to pass on titles already confirmed by other agents of the government.

1869. *The Alicia v. United States*, 7 Wall. 571.

Declared unconstitutional provisions of Act June 30, 1864, purporting to give jurisdiction to the Supreme Court of prize cases appealed from the District to the Circuit Court by a prior act, and not disposed of by the Circuit Courts.

1870. *Hepburn v. Griswold*, 8 Wall. 603.

Declared unconstitutional the Legal Tender Acts of 1862-63, in so far as they made United States notes a legal tender in payment of debts contracted before the passage of the act.

1870. *United States v. De Witt*, 9 Wall. 41.

Declared unconstitutional provisions of Act March 2, 1867, which prohibited the sale of petroleum below a certain standard; the court holding that the act was unconstitutional, in that it prohibited trade within the limits of a state.

1870. *Justices of Supreme Court v. United States ex rel. Murray*, 9 Wall. 274.

Declared unconstitutional Act March 3, 1863, providing for the removal of a judgment in a state court in a case tried by a jury to the

Circuit Court of the United States for a retrial, as a violation of the Seventh Amendment to the Constitution.

1871. *Buffington v. Day*, 11 Wall. 113.

Declared unconstitutional that portion of the Income Tax Laws of 1864, 1865, 1866, and 1867 which imposed a tax upon the salary of judicial officers of a state.

1872. *United States v. Klein*, 13 Wall. 128.

Declared unconstitutional a provision of the Appropriation Act of 1870 (Act July 12, 1870) which annulled the effect of the President's pardon on one who participated in the Rebellion.

1873. *United States v. Baltimore & O. Ry. Co.*, 17 Wall. 322.

Declared unconstitutional provisions of the Revenue Acts of 1864 and 1866 which laid a tax on interest on bonds issued by the city of Baltimore, on the ground that the federal government had no right to levy tax on the instrumentalities of the state.

1876. *United States v. Reese*, 92 U. S. 214.

Declared unconstitutional provisions of Act May 13, 1870, providing for the punishment of all who refused to receive and count the votes of citizens having all of the qualifications of voters, because of their race, color, or previous condition of servitude.

1878. *United States v. Fox*, 95 U. S. 670.

Declared unconstitutional provisions of Act May 31, 1870, that one against whom bankruptcy proceedings are commenced, who within three months prior thereto obtained goods with the intent to defraud, shall be punished by imprisonment.

1879. *United States v. Steffens*, 100 U. S. 82 (*Trade-Mark Cases*).

Declared unconstitutional provisions of Act July 8, 1870, and Act August 14, 1876, relating to trade marks, on the ground that this matter was not delegated to Congress.

1883. *United States v. Harris*, 106 U. S. 629, 1 S. Ct. 601.

Declared unconstitutional provisions of Act April 20, 1861, providing for the punishment of persons conspiring to deprive any other person of the equal protection of the law, on the ground that no warrant can be found in the Constitution for its enactment.

1883. *United States v. Stanley*, 109 U. S. 3, 3 S. Ct. 18.

Declared unconstitutional the first and second sections of Civil Rights Act March 1, 1875, punishing those who denied equal accommodations at inns, theaters, trains, etc., because of previous condition of servitude, as not being authorized by the Thirteenth or Fourteenth Amendments, which only prohibit the states from passing such laws.

1886. *Boyd v. United States*, 116 U. S. 616, 6 S. Ct. 524.

Declared unconstitutional provisions of Act June 22, 1874, which authorized a United States court in revenue cases to require the defendant

or claimant to produce in court his private books and papers, as being repugnant to the Fourth and Fifth Amendments.

1888. *Callan v. Wilson*, 127 U. S. 540, 8 S. Ct. 1301.

Declared unconstitutional section 1064, R. S. D. C., in so far as they deny the right to a jury trial to one charged with a criminal offense. This decision established the right to trial by jury in police court cases in the District.

1892. *Counselman v. Hitchcock*, 142 U. S. 547, 12 S. Ct. 195.

Declared unconstitutional Rev. St. §860, Interstate Commerce Act, as limiting the provisions of the Constitution, which declare that a person shall not be compelled in any criminal case to be a witness against himself.

1893. *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 13 S. Ct. 622.

Declared unconstitutional the provisions of Act Aug. 11, 1888, for stipulating that in estimating the sum to be paid by the United States for a lot and dam, the franchise of the corporation to take tolls shall not be considered or estimated. The court holds that what is just compensation for private property taken for public use is a judicial and not a legislative question.

1895. *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 15 S. Ct. 673.

Declared unconstitutional the Income Tax Act of 1894 as a direct tax.

1896. *Wong Wing v. United States*, 163 U. S. 228, 16 S. Ct. 977.

Declared unconstitutional that portion of Act May 5, 1892 (Chinese Exclusion Act), which provided that one adjudged to be not lawfully entitled to remain in the United States shall be imprisoned at hard labor and thereafter removed from the United States.

1899. *Kirby v. United States*, 174 U. S. 47, 19 S. Ct. 574.

Declared unconstitutional so much of Act March 3, 1875, as provided that the judgment of conviction against the principal in the crime of embezzlement or larceny of property of the United States shall be evidence, in the prosecution against a receiver thereof, that the property was embezzled or stolen, on the ground that it was in violation of the Sixth Amendment, providing that an accused shall be confronted with the witnesses against him.

1901. *Fairbank v. United States*, 181 U. S. 283, 21 S. Ct. 648.

Declared unconstitutional the provision of Internal Revenue Act June 13, 1898, providing for stamp tax on foreign bills of lading, on the ground that the tax was in effect a tax on the articles included in the bill of lading, and therefore a tax on exports prohibited by article 1, section 9, of the Constitution.

1903. *James v. Bowman*, 190 U. S. 127, 23 S. Ct. 678.

Declared unconstitutional provisions of Act May 31, 1870, providing for punishment of individuals who, by means of bribery, prevent persons to whom the right of suffrage is granted by the Fifteenth Amendment, from exercising that right, on the ground that the provisions of the amendment apply to abridgments of the right by the United States, or by any state, and not to acts of individuals.

1905. *In re Heff*, 197 U. S. 488, 25 S. Ct. 506.

Declared unconstitutional provisions of Act Jan. 30, 1897, relating to sale of liquor within a state to an Indian to whom an allotment of land had been made and the privileges of citizenship extended, as an improper exercise of the power to regulate commerce "with the Indian tribes."

1905. *Rassmussen v. United States*, 197 U. S. 516, 25 S. Ct. 514.

Declared unconstitutional provisions of Act June 6, 1900, providing that, in trials for misdemeanors in Alaska, six jurors should constitute a legal jury, on the ground that it was repugnant to the Sixth Amendment.

1906. *Hodges v. United States*, 203 U. S. 1, 27 S. Ct. 6.

Declared unconstitutional provision of Act (R. S. §§1977, 5508) making it an offense against the United States for private individuals to compel negro citizens, by intimidation and force, to desist from performing their contracts of employment, as beyond the scope of the Thirteenth Amendment.

1908. *Howard v. Illinois Central Railroad Co.*, 207 U. S. 463, 28 S. Ct. 141.

Declared unconstitutional provisions of Employers' Liability Act June 11, 1906, extending its effect to all employees of agencies engaged in interstate commerce, on the ground that it regulated intrastate as well as interstate commerce in such a way that the provisions could not be separated.

1908. *Adair v. United States*, 208 U. S. 161, 28 S. Ct. 277.

Declared unconstitutional provisions of Act June 1, 1898, making it a criminal offense against the United States for an agent or officer of an interstate carrier to discharge an employee because of his membership in a labor organization, as an invasion of the right of personal liberty and of property, as guaranteed by the Fifth Amendment.

1909. *Keller v. United States*, 213 U. S. 138, 29 S. Ct. 470.

Declared unconstitutional provisions of Act Feb. 20, 1907, prescribing criminal punishment for the keeping, maintaining, supporting, or harboring of alien women for the purpose of prostitution, as beyond the powers delegated to Congress by the states.

1909. *United States v. Evans*, 213 U. S. 297, 29 S. Ct. 507.

Declared unconstitutional provisions of District Columbia Code, §935, providing that in criminal prosecution the United States or the

District shall have the same right of appeal as is given to defendant with the further proviso that, if on appeal error should be found, a verdict in favor of the defendant should not be set aside. The court holds that this presents only a moot question, the decision of which is not a judicial function.

1911. *Muskrat v. United States*, 219 U. S. 346, 31 S. Ct. 250.

Declared unconstitutional provisions of Act March 1, 1907, attempting to confer jurisdiction upon the Court of Claims, and by appeal upon the Supreme Court, of suits against the United States to be brought by Cherokee Indians to determine the validity of certain acts of Congress.

1911. *Coyle v. Smith*, 221 U. S. 559, 31 S. Ct. 688.

Declared unconstitutional provisions of Act June 16, 1916, admitting Oklahoma to the Union, which provided that the state capital should not be changed from Guthrie prior to 1913, on the ground that, although accepted by an irrevocable ordinance, it ceased to be a valid limitation upon the power of the state after its admission.

1913. *Butts v. Merchants' & Miners' Transp. Co.*, 230 U. S. 126, 33 S. Ct. 964.

Declared unconstitutional provisions of Civil Rights Act March 1, 1875, denying the validity of their application to only the District of Columbia and places within the jurisdiction of the United States, as the sea, as not within the intent of Congress.

1915. *United States v. Hvoslef*, 237 U. S. 1, 35 S. Ct. 459.

Declared unconstitutional provisions of Revenue Act June 13, 1898, for stamp tax on charter parties for carriage from state ports to foreign ports, as a violation of the Constitution (article 1, §9), providing that no tax shall be laid on articles exported from any state.

1915. *Thames & Mersey Marine Ins. Co. v. United States*, 237 U. S. 19, 35 S. Ct. 496.

Declared unconstitutional provisions of Revenue Act June 13, 1898, imposing a stamp tax upon policies insuring cargoes against marine risks, as being in substance a tax upon exports, contrary to Const., art. 1, §9.

1918. *Hammer v. Dagenhart*, 247 U. S. 251, 38 S. Ct. 529.

Declared unconstitutional the first Child Labor Act, Act Sept. 1, 1916, as an invalid attempt by Congress, acting under its power to regulate commerce; to control, to the practical exclusion of the states, all manufacture of articles intended for interstate shipment.

1920. *Eisner v. Macomber*, 252 U. S. 189, 40 S. Ct. 189.

Declared unconstitutional provisions of Revenue Act Sept. 8, 1916, providing that stock dividends shall be considered income; Congress having no power within the Sixteenth Amendment, to define income, but simply to tax it without regard to apportionment according to the population.

1920. *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, 40 S. Ct. 438.

Declared unconstitutional provisions of Act Oct. 6, 1917, which extended to claimants the rights and remedies under the Workmen's Compensation Law of any state, as authorizing and sanctioning action by the states in prescribing and enforcing rights, obligations, liabilities, and remedies designed to provide compensation for injuries to employees engaged in maritime work, and therefore beyond the power of Congress, which cannot delegate to the states the power given it by Const., art. 3, §2, to legislate concerning rights and liabilities within the maritime jurisdiction.

1920. *Evans v. Gore*, 253 U. S. 245, 40 S. Ct. 550.

Declared unconstitutional a provision of Act Feb. 24, 1919, so far as it imposes a tax upon the income of judges of the courts of the United States, including their salaries, as a violation of Const., art. 3, §1, providing that the compensation of judges shall not be diminished during their term of office.

1921. *United States v. L. Cohen Grocery Co.*, 255 U. S. 81, 41 S. Ct. 298.

Declared unconstitutional a provision of Act Oct. 22, 1919, making it unlawful to make any unjust or unreasonable charge in dealing in necessities, because it fixes no ascertainable standard of guilt, and does not adequately inform those accused of the nature and cause of the accusation against them, as required by the Fifth and Sixth Amendments.

1921. *Newberry v. United States*, 256 U. S. 232, 41 S. Ct. 469.

Declared unconstitutional provisions of Corrupt Practices Act June 25, 1910, so far as it applies to party primaries or conventions.

1922. *United States v. Moreland*, 258 U. S. 433, 42 S. Ct. 368.

Declared unconstitutional a provision of Act March 23, 1906, which permitted punishment for an infamous crime to be imposed after prosecution instituted by information, and not by indictment, as a violation of the Fifth Amendment.

1922. *Bailey v. Drexel Furniture Co.*, 259 U. S. 20, 42 S. Ct. 449.

Declared unconstitutional provisions of second Child Labor Act, Act Feb. 24, 1919, on the ground that it was manifestly not a tax law, as it purported to be, but was intended to regulate the employment of children, which is a matter reserved to the states under the Tenth Amendment.

1922. *Hill v. Wallace*, 259 U. S. 44, 42 S. Ct. 453.

Declared unconstitutional provisions of the Futures Trading Act Aug. 24, 1921, as beyond the powers conferred upon Congress by the commerce clause of the Constitution.

1923. *Adkins v. Children's Hospital of the District of Columbia*, 261 U. S. 525, 43 S. Ct. 394.

Declared unconstitutional Minimum Wage Act Sept. 19, 1918, as

an arbitrary interference with freedom of contract, in violation of the Fifth Amendment.

1923. *Keller v. Potomac Electric Power Co.*, 261 U. S. 428, 43 S. Ct. 445.

Declared a portion of the Public Utility Act for the District of Columbia, Act March 4, 1913, 37 Stat. 936, 974, invalid as conferring legislative or administrative power on Supreme Court.

1926. *Trusler v. Crooks*, 269 U. S. 475, 46 S. Ct. 165.

Declared the Future Trading Act of Aug. 24, 1921, unconstitutional as imposing a penalty instead of tax.

1926. *Myers v. U. S.*, 272 U. S. 52, 47 S. Ct. 21.

Declared Act July 12, 1876, requiring consent of Senate to removal by President of postmasters of certain classes, invalid under Const., art. 2, under which President has sole power of removal.

1928. *Untermeyer v. Anderson*, 276 U. S. 440, 48 S. Ct. 353.

Declared Revenue Act June 2, 1924, §319, in so far as it imposes tax on gift made while act was pending invalid as denying due process of law.

1935. *Panama Refining Co. v. Ryan*, 293 U. S. 388, 55 S. Ct. 241.

Declared sections of N. R. A. authorizing President to prohibit transportation in interstate commerce of surplus oil, an unconstitutional delegation of legislative power.

1935. *Railroad Retirement Board v. Alton R. Co.*, 295 U. S. 330, 55 S. Ct. 758.

Declared Railroad Retirement Act invalid as not a reasonable regulation of interstate commerce.

1935. *Schechter Poultry Corporation v. U. S.*, 295 U. S. 495, 55 S. Ct. 837.

Declared National Recovery Act invalid as delegation of legislative power to President, and as going beyond power to regulate interstate commerce.

1935. *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 55 S. Ct. 854.

Declared Frazier-Lemke Farm Mortgage Act (Bankruptcy Act §75(s), 11 U. S. C. A. §203(s), invalid as depriving mortgagees of property rights without compensation.

1936. *United States v. Butler*, 297 U. S. 1, 56 S. Ct. 312.

Declared unconstitutional provisions of A. A. A. as beyond the delegated powers of Congress and limiting the general welfare clause to the power to tax and not the power to legislate generally.

1936. *Carter v. Carter Coal Co.*, 298 U. S. 238, 56 S. Ct. 855.

Declared Bituminous Coal Conservation Act unconstitutional as to labor provisions which only indirectly affect interstate commerce.